

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 501

Introduced by Assembly Member Emmerson

February 24, 2009

An act to amend Sections 2054 and 2435 of, and to add Section 2088 to, the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 501, as amended, Emmerson. Physicians and ~~surgeons; limited license; surgeons.~~

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law makes it a misdemeanor for a person who is not licensed as a physician and surgeon to use certain words, letters, and phrases or any other terms that imply that he or she is authorized to practice medicine as a physician and surgeon.

This bill would authorize a graduate of an approved medical school who is enrolled in a postgraduate training program approved by the board to use certain words, letters, or phrases while under instruction and under the supervision of a licensed physician and surgeon at the training program. The bill would also authorize a graduate of an approved medical school who does not have a valid certificate as a physician and surgeon issued by the board and who is not otherwise authorized to practice medicine in this state to use the initials "M.D." subject to specified conditions.

Existing law authorizes the board to issue a probationary license subject to specified terms and conditions, including restrictions against engaging in certain types of medical practice. Existing law authorizes

a licensee who demonstrates that he or she unable to practice medicine due to a disability to request a waiver of the license renewal fee. Under existing law, a licensee granted that waiver is prohibited from practicing medicine until he or she establishes that the disability no longer exists or signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician.

This bill would authorize an applicant for a license who is otherwise eligible for a license but is unable to practice some aspects of medicine safely due to a disability to receive a limited license if the applicant pays the license fee and signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician and agreed to by the board. By requiring that the agreement be signed under penalty of perjury, the bill would expand the scope of a crime, thereby imposing a state-mandated local program. The bill would authorize the board to require the applicant to obtain an independent clinical evaluation of his or her ability to practice medicine safely as a condition of receiving the limited license.

Under existing law, licensees of the board are required to pay licensure fees, including an initial licensing fee of \$790 and a biennial renewal fee of \$790. Existing law authorizes the board to increase those fees in certain circumstances and states the intent of the Legislature that, in setting these fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board equal to 2 months' operating expenditures.

This bill would require those fees to be fixed by the board at a maximum of \$790, while retaining the authority of the board to raise those fees in certain circumstances. The bill would state the intent of the Legislature that, in setting those fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board in an amount not less than 2 nor more than 4 months' operating expenditures. The bill would also require the Bureau of State Audits to commence a review of the board's financial status by January 1, 2012, and to report its findings and recommendations to the Joint Legislative Audit Committee by June 1, 2012, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 2054 of the Business and Professions*
2 *Code is amended to read:*

3 2054. (a) Any person who uses in any sign, business card, or
4 letterhead, or, in an advertisement, the words “doctor” or
5 “physician,” the letters or prefix “Dr.,” the initials “M.D.,” or any
6 other terms or letters indicating or implying that he or she is a
7 physician and surgeon, physician, surgeon, or practitioner under
8 the terms of this or any other law, or that he or she is entitled to
9 practice hereunder, or who represents or holds himself or herself
10 out as a physician and surgeon, physician, surgeon, or practitioner
11 under the terms of this or any other law, without having at the time
12 of so doing a valid, unrevoked, and unsuspended certificate as a
13 physician and surgeon under this chapter, is guilty of a
14 misdemeanor.

15 (b) A holder of a valid, unrevoked, and unsuspended certificate
16 to practice podiatric medicine may use the phrases “doctor of
17 podiatric medicine,” “doctor of podiatry,” and “podiatric doctor,”
18 or the initials “D.P.M.,” and shall not be in violation of subdivision
19 (a).

20 (c) *A graduate of an approved medical school who is enrolled*
21 *in a postgraduate training program approved by the board may*
22 *use the words “doctor” or “physician,” the letters or prefix “Dr.,”*
23 *or the initials “M.D.” while under instruction and under the*
24 *supervision of a licensed physician and surgeon at that*
25 *postgraduate training program, and shall not be in violation of*
26 *subdivision (a).*

27 (d) *Except as provided in subdivision (c), a graduate of an*
28 *approved medical school who does not have a valid, unrevoked,*
29 *and unsuspended certificate as a physician and surgeon issued*
30 *under this chapter and who is not otherwise authorized to practice*
31 *medicine under this chapter may use the initials “M.D.” without*
32 *violating subdivision (a), provided he or she does not do either of*
33 *the following:*

1 (1) *Imply that he or she is a physician and surgeon, physician,*
2 *surgeon, or practitioner under the terms of this chapter, or that*
3 *he or she is entitled to practice medicine in this state.*

4 (2) *Represent or hold himself or herself out as a physician and*
5 *surgeon, physician, surgeon, or practitioner under the terms of*
6 *this chapter.*

7 ~~SECTION 1.~~

8 SEC. 2. Section 2088 is added to the Business and Professions
9 Code, to read:

10 2088. (a) An applicant for a physician's and surgeon's license
11 who is otherwise eligible for that license but is unable to practice
12 some aspects of medicine safely due to a disability may receive a
13 limited license if he or she does both of the following:

14 (1) Pays the initial license fee.

15 (2) Signs an agreement on a form prescribed by the board, signed
16 under penalty of perjury, in which the applicant agrees to limit his
17 or her practice in the manner prescribed by the reviewing physician
18 and agreed to by the board.

19 (b) The board may require the applicant described in subdivision
20 (a) to obtain an independent clinical evaluation of his or her ability
21 to practice medicine safely as a condition of receiving a limited
22 license under this section.

23 SEC. 3. *Section 2435 of the Business and Professions Code is*
24 *amended to read:*

25 2435. The following fees apply to the licensure of physicians
26 and surgeons:

27 (a) Each applicant for a certificate based upon a national board
28 diplomat certificate, each applicant for a certificate based on
29 reciprocity, and each applicant for a certificate based upon written
30 examination, shall pay a nonrefundable application and processing
31 fee, as set forth in subdivision (b), at the time the application is
32 filed.

33 (b) The application and processing fee shall be fixed by the
34 ~~Division of Licensing~~ board by May 1 of each year, to become
35 effective on July 1 of that year. The fee shall be fixed at an amount
36 necessary to recover the actual costs of the licensing program as
37 projected for the fiscal year commencing on the date the fees
38 become effective.

39 (c) Each applicant who qualifies for a certificate, as a condition
40 precedent to its issuance, in addition to other fees required herein,

1 shall pay an initial license fee, if any, *in an amount fixed by the*
2 *board consistent with this section*. The initial license fee shall ~~be~~
3 *not exceed* seven hundred ninety dollars (\$790). An applicant
4 enrolled in an approved postgraduate training program shall be
5 required to pay only 50 percent of the initial license fee.

6 (d) The biennial renewal fee shall be *fixed by the board*
7 *consistent with this section and shall not exceed* seven hundred
8 ninety dollars (\$790).

9 (e) Notwithstanding subdivisions (c) and (d), and to ensure that
10 subdivision (k) of Section 125.3 is revenue neutral with regard to
11 the board, the board may, by regulation, increase the amount of
12 the initial license fee and the biennial renewal fee by an amount
13 required to recover both of the following:

14 (1) The average amount received by the board during the three
15 fiscal years immediately preceding July 1, 2006, as reimbursement
16 for the reasonable costs of investigation and enforcement
17 proceedings pursuant to Section 125.3.

18 (2) Any increase in the amount of investigation and enforcement
19 costs incurred by the board after January 1, 2006, that exceeds the
20 average costs expended for investigation and enforcement costs
21 during the three fiscal years immediately preceding July 1, 2006.
22 When calculating the amount of costs for services for which the
23 board paid an hourly rate, the board shall use the average number
24 of hours for which the board paid for those costs over these prior
25 three fiscal years, multiplied by the hourly rate paid by the board
26 for those costs as of July 1, 2005. Beginning January 1, 2009, the
27 board shall instead use the average number of hours for which it
28 paid for those costs over the three-year period of fiscal years
29 2005–06, 2006–07, and 2007–08, multiplied by the hourly rate
30 paid by the board for those costs as of July 1, 2005. In calculating
31 the increase in the amount of investigation and enforcement costs,
32 the board shall include only those costs for which it was eligible
33 to obtain reimbursement under Section 125.3 and shall not include
34 probation monitoring costs and disciplinary costs, including those
35 associated with the citation and fine process and those required to
36 implement subdivision (b) of Section 12529 of the Government
37 Code.

38 (f) Notwithstanding Section 163.5, the delinquency fee shall be
39 10 percent of the biennial renewal fee.

1 (g) The duplicate certificate and endorsement fees shall each
2 be fifty dollars (\$50), and the certification and letter of good
3 standing fees shall each be ten dollars (\$10).

4 (h) It is the intent of the Legislature that, in setting fees pursuant
5 to this section, the board shall seek to maintain a reserve in the
6 Contingent Fund of the Medical Board of California ~~equal to~~
7 ~~approximately two in an amount not less than two nor more than~~
8 ~~four months' operating expenditures.~~

9 (i) Not later than ~~July 1, 2007,~~ *January 1, 2012*, the Bureau of
10 State Audits (BSA) shall ~~conduct~~ *commence* a review of the board's
11 financial status, ~~its financial projections and historical projections,~~
12 including, but not limited to, its projections related to expenses,
13 revenues, and reserves, ~~and the impact of the loan from the~~
14 ~~Contingent Fund of the Medical Board of California to the General~~
15 ~~Fund made pursuant to the Budget Act of 2008.~~ The BSA shall,
16 on the basis of the review, report ~~its findings and recommendations~~
17 to the Joint Legislative Audit Committee ~~before January 1, 2008,~~
18 ~~on any adjustment to the amount of the licensure fee that is required~~
19 ~~to maintain the reserve amount in the Contingent Fund of the~~
20 ~~Medical Board of California pursuant to subdivision (h) of Section~~
21 ~~2435, and whether a refund of any excess revenue should be made~~
22 ~~to licentiates by June 1, 2012. This review shall be funded from~~
23 ~~the existing resources of the board during the 2011–12 fiscal year.~~

24 ~~SEC. 2.~~

25 *SEC. 4.* No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.